

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Richard Mann d/b/a	)	File No. EB-06-SE-388
The Antique Radio Collector	)	NAL/Acct. No. 200732100016
Toledo, OH	)	FRN # 0016215626

**FORFEITURE ORDER**

**Adopted: November 23, 2007****Released: November 27, 2007**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of seven thousand dollars (\$7,000) to Richard Mann d/b/a The Antique Radio Collector (“Antique Radio Collector”) for willful and repeated violations of Section 302(b) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 2.803(a)(1) of the Commission’s Rules (“Rules”).<sup>2</sup> The noted violations involve Antique Radio Collector’s marketing of uncertified AM radio transmitters.

**II. BACKGROUND**

2. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a)(1) of the Rules prohibits the sale or lease, offer of sale or lease, importation, or shipment of radio frequency devices, as well as the distribution of such devices for the purpose of selling such devices, unless, in the case of a device subject to certification, the device has first been properly authorized, identified and labeled in accordance with the Rules. Section 2.801(a)(1) of the Rules defines a radio frequency device as “any device which in its operation is capable of emitting radio frequency energy ....” Radio frequency devices subject to the Rules include, among other items, radio communication transmitting devices and “any part or component thereof which in use emits radiofrequency energy.”<sup>3</sup> Section 15.201(b) of the Rules<sup>4</sup> requires intentional radiators<sup>5</sup> to be certified by the Commission prior to marketing.

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<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. § 2.803(a)(1).

<sup>3</sup> See 47 C.F.R. § 2.801(a) and (d).

<sup>4</sup> See 47 C.F.R. § 15.201(b).

<sup>5</sup> Under Section 15.3(o) of the Rules, 47 C.F.R. § 15.3 (o), an intentional radiator is “[a] device that intentionally generates and emits radio frequency energy by radiation or induction.”

3. On November 15, 2006, the Spectrum Enforcement Division of the Enforcement Bureau issued a Letter of Inquiry (“LOI”) to Antique Radio Collector in response to a complaint alleging that Antique Radio Collector was marketing in the United States fully-assembled AM transmitters, specifically, the SSTRAN model AMT3000 AM transmitter.<sup>6</sup> In its LOI Response dated November 25, 2006,<sup>7</sup> Antique Radio Collector indicated that it was not aware of a certification authorizing a fully assembled AMT3000 transmitter. The LOI Response indicated that Richard Mann, owner of Antique Radio Collector, purchased the transmitters in kit form from a third party and assembled the transmitters in his residence. Antique Radio Collector advertised the assembled transmitters for sale online at [www.olderradio.com](http://www.olderradio.com), and it has sold a number of completed units to end users since December 2003.

4. On March 15, 2007, the Enforcement Bureau’s Spectrum Enforcement Division (“Division”) released a *Notice of Apparent Liability for Forfeiture* (“NAL”) finding that Antique Radio Collector marketed uncertified AM radio transmitters in apparent willful and repeated violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.<sup>8</sup> The NAL proposed a forfeiture in the amount of seven thousand dollars (\$7,000) for the apparent violations.

5. In its April 7, 2007 response to the NAL, Antique Radio Collector seeks reduction or cancellation of the proposed forfeiture. Specifically, Antique Radio Collector argues that it “does not possess or offer” fully-assembled AMT3000 transmitters but only offers a service, the assembly of AM transmitter kits made available by the manufacturer. Thus, asserts Antique Radio Collection, it neither violated the Act nor the Rules.

### III. DISCUSSION

6. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,<sup>9</sup> Section 1.80 of the Rules,<sup>10</sup> and the Commission’s *Forfeiture Policy Statement*.<sup>11</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>12</sup>

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<sup>6</sup> Letter from Kathy Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Richard Mann, Antique Radio Collector (November 15, 2006).

<sup>7</sup> Letter from Richard Mann d/b/a The Antique Radio Collector, to Neal McNeil, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (November 25, 2006) (“LOI Response”).

<sup>8</sup> *Richard Mann d/b/a The Antique Radio Collector*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4956 (Enf. Bur., Spectrum Enf. Div. 2007).

<sup>9</sup> 47 U.S.C. § 503(b).

<sup>10</sup> 47 C.F.R. § 1.80.

<sup>11</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

<sup>12</sup> 47 U.S.C. § 503(b)(2)(E).

7. We find no merit to the claim that Antique Radio Collector sold only an assembly service of a product manufactured by a third party. We note that Antique Radio Collector's LOI Response included marketing material that stated "we [Antique Radio Collector] have your AMT3000 shipped to us from the manufacturer (they do not offer pre-built transmitters), build and test it for you and then ship your AMT3000 ready for use."<sup>13</sup> Thus, in its LOI Response, Antique Radio Collector submitted evidence demonstrating that Antique Radio Collector assembled SSTRAN AMT3000 transmitters and advertised these devices in connection with the assembly service. While "kits," as defined in Section 15.3(p) of the Rules,<sup>14</sup> are not generally subject to equipment authorization requirements,<sup>15</sup> we have found that the sale and shipment of an unauthorized device assembled from a kit violates Section 302(b) of the Act and Section 2.803(a)(1) of the Rules, regardless of the identity of the kit manufacturer.<sup>16</sup>

8. On the basis of the information before us, we conclude further that Antique Radio Collector willfully and repeatedly violated Section 302(b) of the Act and Section 2.803(a)(1) of the Rules. Section 312(f)(1) of the Act,<sup>17</sup> provides that "the term 'willful,' when used with reference to the commission or omission of any act, means the conscious or deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission."<sup>18</sup> Section 312(f)(1) of the Act<sup>19</sup> defines "repeated" as "the commission or omission of [any] act more than once or,

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<sup>13</sup> LOI Response.

<sup>14</sup> 47 C.F.R. § 15.3(p). Section 15.3(p) of the Rules defines a "kit" as "[a]ny number of electronic parts, usually provided with a schematic diagram or printed circuit board, which, when assembled in accordance with instructions, results in the a device subject to the regulations in this part, even if additional parts of any type are required to complete assembly."

<sup>15</sup> *But see* 47 C.F.R. §§ 2.815(c) (prohibiting the manufacture and marketing of specific amplifier kits that do not meet equipment authorization requirements) and 15.25 (specifying equipment authorization requirements for TV interface devices marketed as kits).

<sup>16</sup> *See Leslie D. Brewer*, Forfeiture Order, 15 FCC Rcd 9999 (Enf. Bur. 2000) (the sale and shipment of an assembled, unauthorized kit violates Section 302(b) of the Act and Sections 2.803(a)(1) and 15.201(b) of the Rules). *See also Liam Patrick Ryan d/b/a L.P. Ryan/Low Power Radio*, Notice of Apparent Liability for Forfeiture, DA 07-4570 (Enf. Bur., Spectrum Enf. Div. rel. Nov. 13, 2007); *Ramsey Electronics Inc.*, Notice of Apparent Liability, 21 FCC Rcd 458 (Enf. Bur., Spectrum Enf. Div. 2006); *CB Shack 500 Alabama Highway*, Forfeiture Order, 14 FCC Rcd 7067 (Compl. & Inf. Bur. 1999), *recon. dismissed*, 15 FCC Rcd 821 (Enf. Bur. 2000).

<sup>17</sup> 47 U.S.C. § 312(f)(1).

<sup>18</sup> The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance" and applying the definitions of willful in Sections 312(f)(1) to forfeiture cases). *See also Abocom Systems, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 7448, 7451 (Enf. Bur. 2007) (rejecting Abocom's argument that it was only "inadvertently noncompliant" and that "its actions were not deliberate or intended to violate the rules," and imposing a forfeiture for willful and repeated violations of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules).

<sup>19</sup> 47 U.S.C. § 312(f)(2).

if such commission or omission is continuous, for more than one day.”<sup>20</sup> In its LOI Response, Antique Radio Collector admits to the marketing<sup>21</sup> of 46 complete units to end users since December 2003. Because Antique Radio Collector failed to obtain an authorization for the assembled SSTRAN AMT3000 transmitters prior to the marketing of these fully assembled transmitters, we find that Antique Radio Collector willfully and repeatedly violated Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

9. We have considered Antique Radio Collector’s response to the *NAL* in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement* and conclude that it willfully and repeatedly violated the referenced sections of the Act and Rules, that the proposed forfeiture in the amount of seven thousand dollars (\$7,000) is appropriate,<sup>22</sup> and that Antique Radio Collector has not demonstrated that a reduction or cancellation of the proposed forfeiture is warranted.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>23</sup> Richard Mann d/b/a The Antique Radio Collector **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>24</sup> Payment of the forfeiture must be made by credit card through the Commission’s Debt and Credit Management Center at (202) 418-1995, or by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. A request for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12<sup>th</sup> Street, SW, Room 1A625, Washington, D.C. 20554.<sup>25</sup>

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<sup>20</sup> *Id.* See also *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388 (applying the definition of “repeated” in Section 312(f)(2) of the Rules to forfeiture cases).

<sup>21</sup> Section 2.803(e)(4) of the Rules defines “marketing” as the “sale or lease, or offering to sale or lease, including advertising for sale or lease, or importation, shipment or distribution for the purpose of selling or leasing or offering for sale or lease.” 47 C.F.R. § 2.803(e)(4).

<sup>22</sup> Section 1.80(b)(4) of the Rules, 47 C.F.R. § 1.80(b)(4), sets a base forfeiture amount of seven thousand dollars (\$7,000) for marketing violations. See e.g., *Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1827-28 (2006), *forfeiture ordered*, 22 FCC Rcd 10451 (2007) (forfeiture paid); *Rocky Mountain Radar*, 22 FCC Rcd 1334, 1339 (Enf. Div., Spectrum Enf. Div. 2007) (imposing base forfeitures of seven thousand dollars (\$7,000) for each model of equipment marketed without authorization).

<sup>23</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>24</sup> 47 U.S.C. § 504(a).

<sup>25</sup> See 47 C.F.R. § 1.1914.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Richard Mann d/b/a The Antique Radio Collector, 4231 Willys Parkway, Toledo, OH 43612.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau